

CORRESPONDENCE

537

WITH THE

GOVERNMENT OF CANADA

IN CONNECTION WITH THE

APPOINTMENT OF THE JOINT HIGH COMMISSION

AND THE

TREATY OF WASHINGTON.

Presented to both Houses of Parliament by Command of Her Majesty,
April, 1872.



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1872.

The EDITH and LORNE PIERCE
COLLECTION of CANADIANA



Queen's University at Kingston

SCHEDULE.

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OF WASHINGTON.

No. 1.

CANADA.

SIR JOHN YOUNG to EARL GRANVILLE.

No. 1.

(No. 131.)

Government House, Ottawa, June 9, 1870.

MY LORD,

(Received 22nd June, 1870.)

I HAVE the honour to forward, herewith, a copy of a Minute of the Privy Council, recommending that the Honourable Alex. Campbell, the Postmaster-General, should be authorized to proceed to England, in order to endeavour to "induce Her Majesty's Government to take prompt action in the several matters" which are set forth in the Minute.

June 9, 1870.

2. Mr. Campbell is the Ministerial leader in the Senate, a gentleman of ability and standing, and well versed in Canadian affairs.

He leaves for England in ten days or so from this date.

I have, &c.,

The Earl Granville, K.G.,

(Signed) JOHN YOUNG.

&c. &c. &c

Enclosure in No. 1.

COPY of a REPORT of a COMMITTEE of the Honourable the PRIVY COUNCIL, approved by His Excellency the GOVERNOR-GENERAL in COUNCIL on the 9th June, 1870.

Enclosure in
No. 1.

The Committee of the Privy Council having recently had under their consideration a number of questions of great importance to the Dominion, among which are the proposed withdrawal of Imperial troops from Canada, the question of fortifications, the recent invasion of Canadian territory by citizens of the United States, and the previous threats and hostile preparations which compelled the Government to call out the Militia, and to obtain the consent of Parliament to the suspension of the Habeas Corpus Act, the systematic trespasses on Canadian fishing grounds by United States' fishermen, and the unsettled question as to the limits within which foreigners can fish under the Treaty of 1818, are of opinion that it is desirable that their views on all these questions should be personally represented to Her Majesty's Government by a member of the Privy Council, and they recommend that the Honourable the Postmaster-General be requested to proceed to England, and to endeavour to induce Her Majesty's Government to take prompt action in the several matters above referred to, in accordance with the views expressed in the Minutes of Council relating thereto, and in any other Minutes which may hereafter be referred to him.

The Committee of Council are of opinion that the Postmaster-General should call the attention of Her Majesty's Government to the Reports of the 15th and 20th of December last from the Minister of Marine and Fisheries, and should urge the importance of securing, with as little delay as possible, the restoration to Canada of the rights which she enjoyed prior to the Reciprocity Treaty, under the interpretation given to the Treaty of 1818 by the Crown Law Officers of England.

The Committee of Council cannot conceal their apprehension that if the citizens of the United States are any longer permitted, as they have been doing the last four years, to fish in waters where, according to our interpretation of the Treaty of 1818, they are trespassers, it may be more difficult to obtain an amicable solution of the point in dispute.

The Committee of Council are fully alive to the importance of taking action at an early period with regard to the construction of a Pacific railroad through Canadian territory; but they think it better to postpone the consideration of the subject until after the departure of the delegates from British Columbia, when instructions will be sent to the Postmaster-General on this important subject.

Certified,
(Signed) WM. H. LEE, Clerk, P.C.

CANADA.

No. 2.

No. 2.

SIR JOHN YOUNG to EARL GRANVILLE.

(No. 154.)

Niagara, July 6, 1870.

(Received July 26, 1870.)

MY LORD,

I HAVE the honour to forward herewith a copy of a Minute of the Privy Council of the Dominion, covering certain memoranda which have been given to the Honourable A. Campbell for his guidance in bringing under the notice of Her Majesty's Government the present position of the Canadian Fishery question, and the views of this Government thereon.

The Earl Granville, K.G.,

&c. &c. &c.

I have, &c.,
(Signed) JOHN YOUNG.

Enclosure in
No. 2.

Enclosure in No. 2.

COPY of a REPORT of a COMMITTEE of the Honourable the PRIVY COUNCIL, approved by His Excellency the GOVERNOR-GENERAL in COUNCIL, on 1st July, 1870.

On a Report, dated 20th June, 1870, from the Honourable the Minister of Marine and Fisheries, submitting for the information of your Excellency in Council a memorandum and documents on the fishery question prepared for the Honourable Mr. Campbell, in connection with his mission to England, under the Minute of Council of 9th ult., and stating that these papers inform him of the position of the question at the present time, and of the views expressed on various occasions for several years past by the British and Canadian Governments; and that the instructions which may be addressed to Mr. Campbell with reference to bringing to an early settlement all matters that have been admitted into dispute between the British and American Governments affecting the fisheries should embrace the following principal points:

1. That fishing rights in British American waters shall be in future enforced as they existed and were maintained under the Treaty of 1818, anterior to the Reciprocity Treaty of 1854, in accordance with the laws of nations.

2. That failing such positive enforcement of these undoubted rights, the question arising out of the said Treaty as to the definition of certain limits of exclusion, by headland lines, be referred to a mixed Commission, to be named by the British and American Governments, and to be composed of one Imperial, one United States, and one Canadian Commissioner, providing some independent reference in case of need; the principle on which such Commission shall be chosen and act to be as provided in the Earl of Clarendon's Despatch of 11th May, 1866.

3. That such mixed Commission shall be formed during the current year, and shall, in order to facilitate speedy reference, hold its sittings either at Halifax, Washington, or Ottawa, the negotiations and preliminary arrangements for the same to be carried out between the Governor-General of Canada and the United States' Government, through the British Minister at the American capital.

The Committee recommend that the Report of the Honourable the Minister of Marine and Fisheries be approved and acted on.

(Certified) WM. H. LEE,
Clerk, Privy Council.

No. 3.

No. 3.

The EARL OF KIMBERLEY to SIR JOHN YOUNG.

(No. 198.)

SIR,

Downing Street, July 27, 1870.

ON receiving from Her Majesty the seals of this office, I took an early opportunity of communicating with Mr. Campbell, the Postmaster-General of Canada, who has come to England to place before Her Majesty's Government the views of your Government on various questions connected with the Dominion. Mr. Campbell brought under my consideration the following subjects:—The first was the protection of the Canadian fisheries from encroachments by foreign fishing vessels. On this point I concur with your Ministers that it would be desirable that the questions which have been so long in dispute with the United States as to the geographical limits of the exclusive fishing rights of Canada under the Treaty of 1818, should be settled by a joint British and American Commission, on which the Dominion should be represented. Her Majesty's Government will propose to the United States' Government the appointment of such a Commission.

Now that the instructions given to Her Majesty's cruisers and the Government vessels of Canada have been brought into harmony, I do not think it necessary, in this Despatch, to make any observations on the details of those instructions. I will only remark that I am most anxious to avoid any misunderstanding on this subject between the Imperial and Canadian Governments, and with this view the regulations to be issued for the

fishing season of 1871 should be considered by the two Governments in good time before the season commences. Their nature must, of course, much depend on the establishment and progress of the proposed Commission, but I shall gladly receive from your Government, at the proper time, any statement on this subject, and shall give it my best attention.

2. The Bill authorizing the guarantee of the Fortification Loan, on which Mr. Campbell expressed some anxiety, is already before Parliament.

3. Mr. Campbell pressed strongly upon me that a representation should be made to the United States' Government, with reference to the late Fenian incursion into Canada, which has awakened such just feelings of indignation in the Dominion, and he urged the claims of Canada for reparation for the losses which she has sustained by that incursion. Her Majesty's Government have carefully considered what steps it would be advisable to take in this matter, and I have to acquaint you that they are of opinion that, in the first instance, your Ministers should draw up a full and authentic statement of the facts, and of the claims which they found upon them. This statement should be transmitted by you to Her Majesty's Government, in order that it may be laid by them before the Government of the United States, and I need scarcely say that whilst it should contain everything which is material to the case, it should be a document of such a character as may properly be communicated to the Government of a State with which Her Majesty is on terms of amity.

4. Mr. Campbell, whilst stating the entire willingness of the Canadian Government to take measures for the defence of the Dominion, expressed a hope that an Imperial garrison would be maintained at Quebec. You are so well acquainted with the general policy of Her Majesty's Government as to the distribution of Imperial troops, that I need not enter into any further explanation of that policy; and as regards the particular question of the garrison of Quebec, you are already aware that it has been decided that a battalion of infantry and a battery of artillery shall remain there during the coming winter. I cannot conclude without acknowledging the able and temperate manner in which Mr. Campbell brought under my consideration the various questions which have been discussed between us. The opportunity which I have had of explaining to him the views of Her Majesty's Government has made it unnecessary for me to do more than briefly indicate in this Despatch the course which it is proposed to take.

I have, &c.,

(Signed) KIMBERLEY.

Sir John Young, Bart., G.C.B.,
&c. &c. &c.

No. 4.

No. 4.

The EARL OF KIMBERLEY to The LORD LISGAR.

(Confidential.)

MY LORD,

Downing Street, February 16, 1871.

You have already been informed by telegram of the views of Her Majesty's Government upon the Fishery Questions, but I think it will be convenient, with reference to the pending negotiations, that a somewhat fuller statement of those views should now be placed on record.

It would not be possible for Her Majesty's Government to pledge themselves to any foregone conclusion upon any particular point connected with these negotiations, but they have anxiously considered the questions which concern Canada, and they feel confident that the Canadian Government will agree with them that a satisfactory termination of the difficulties which have arisen with the United States can only be attained by taking as broad and liberal a view as is consistent with the just rights and real interests of the Dominion.

As at present advised, Her Majesty's Government are of opinion that the right of Canada to exclude Americans from fishing in the waters within the limits of three marine miles of the coast is beyond dispute, and can only be ceded for an adequate consideration.

Should this consideration take the form of a money payment, it appears to Her Majesty's Government that such an arrangement would be more likely to work well than if any conditions were annexed to the exercise of the privilege of fishing within the Canadian waters.

The presence of a considerable number of cruisers would always be necessary to secure the performance of such conditions, and the enforcement of penalties for the non-observance of them would be certain to lead to disputes with the United States.

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With respect to the question, What is a bay or creek, within the meaning of the first Article of the Treaty of 1818, Her Majesty's Government adhere to the interpretation which they have hitherto maintained of that Article; but they consider that the difference which has arisen with the United States on this point might be a fit subject for compromise.

The exclusion of American fisherman from resorting to Canadian ports, "except for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water," might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59 George III., cap. 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States' Government, under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects.

In conclusion I have to state that Her Majesty fully appreciates the loyal and prompt manner in which the Canadian Government have assented to the appointment of the Commission which is about to sit at Washington. The high character and recognized ability of the British Commissioners afford ample security that the interests of Canada will be carefully protected during the forthcoming negotiations.

The Lord Lisgar,
&c. &c. &c.

I am, &c.,
(Signed) KIMBERLEY.

No. 5.

No. 5.

The EARL OF KIMBERLEY to The LORD LISGAR.

(No. 374.)

My LORD,

Downing Street, March 17, 1871.

IN answer to your telegram received on the 10th instant, stating that in the opinion of your Government the Canadian fisheries cannot be sold without the consent of the Dominion, I have already informed your Lordship by telegraph that Her Majesty's Government never had any intention of advising Her Majesty to part with those fisheries without such consent.

When the Reciprocity Treaty was concluded, the Acts of the Nova Scotian and New Brunswick Legislatures relating to the fisheries were suspended by Acts of those Legislatures, and the fishery rights of Canada are now under the protection of a Canadian Act of Parliament, the repeal of which would be necessary in case of the cession of those rights to any Foreign Power.

I think it right, however, to add that the responsibility of determining what is the true construction of a Treaty made by Her Majesty with any Foreign Power, must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of Treaty rights may depend not only on the literal construction of the Treaty, but on the moderation and reasonableness with which those rights are asserted.

The Lord Lisgar,
&c. &c. &c.

I have, &c.,
(Signed) KIMBERLEY.

No. 6.

No. 6.

The EARL OF KIMBERLEY to The LORD LISGAR.

(No. 444.)

My LORD,

Downing Street, June 17, 1871.

I HAVE the honour to enclose herewith copies of the Treaty signed at Washington on May 8th by the Joint High Commissioners, which has been ratified by Her Majesty and by the President of the United States, and of the instructions to Her Majesty's High Commissioners, and Protocols of the conferences held by the Commission.

The Dominion is, from its geographical position as the immediate neighbour of the United States, so peculiarly interested in the maintenance of cordial relations between

that Republic and the British Empire, that it must be a source of satisfaction to the Canadian Government that Her Majesty has been able to conclude a Treaty for the amicable settlement of differences which might have seriously endangered the good understanding between the two countries.

Moreover the rules laid down in Article 6 as to the international duties of neutral Governments are of special importance to the Dominion, which carries on such an extensive and increasing maritime commerce, and possesses such a considerable merchant navy.

But independently of the advantages which Canada must derive from the removal of the causes of difference with the United States, arising out of occurrences during the civil war, Her Majesty's Government believe that the settlement which has been arrived at of the questions directly affecting British North America cannot fail to be beneficial to the Dominion. I need not refer to the well-known history of the Fishery Question further than to observe that ever since the termination by the British Government, in consequence of the war of 1812, of the liberty enjoyed under the Treaty of 1783 by American citizens of fishing in the territorial waters of the British Colonies, and the renunciation by the United States in the Treaty of 1818 of all claim to that liberty, this question has, in different forms, been the subject of controversy with the United States. Her Majesty's Government have always contended for the rights of the Colonies, and they have employed the British naval forces in the protection of the colonial fisheries; but they could not overlook the angry feelings to which this controversy has given rise, and the constant risk that in the enforcement of the exclusion of American fishermen from the colonial waters a collision might take place which might lead to the most serious consequences, and they would have been wanting in their duty if they had not availed themselves of the opportunity presented by the late negotiation to remove a cause of perpetual irritation and danger to the relations of this country and the Dominion with the United States.

The Canadian Government itself took the initiative in suggesting that a joint British and American Commission should be appointed with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818; but it was certain that however desirable it might be, in default of any complete settlement, to appoint such a Commission, the causes of the difficulty lay deeper than any question of interpretation, and the mere discussion of such points as the correct definition of bays could not lead to a really friendly agreement with the United States. It was necessary, therefore, to endeavour to find an equivalent which the United States might be willing to give in return for the fishery privileges, and which Great Britain, having regard both to Imperial and Colonial interests, could properly accept. Her Majesty's Government are well aware that the arrangement which would have been most agreeable to Canada was the conclusion of a Treaty similar to the Reciprocity Treaty of 1854, and a proposal to this effect was pressed upon the United States' Commissioners, as you will find in the 36th Protocol of the Conferences. This proposal was, however, declined, the United States' Commissioners stating "that they could hold out no hope that the Congress of the United States would give its consent to such a tariff arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries." The United States' Commissioners did, indeed, propose that coal, salt, and fish should be reciprocally admitted free, and lumber after the 1st of July, 1874; but it is evident that, looked at as a tariff arrangement, this was a most inadequate offer, as will be seen at once when it is compared with the long list of articles admitted free under the Reciprocity Treaty. Moreover, it is obvious from the frank avowal of the United States' Commissioners that they only made this offer because one branch of Congress had recently, more than once, expressed itself in favour of the abolition of duties on coal and salt, and because Congress had partially removed the duty from lumber, and the tendency of legislation in the United States was towards the reduction of taxation and of duties, so that to have ceded the fishery rights in return for these concessions would have been to exchange them for commercial arrangements which there is reason to believe may, before long, be made without any such cession, to the mutual advantage of both the Dominion and the United States; and Her Majesty's Government are bound to add that whilst, in deference to the strong wishes of the Dominion Government, they used their best efforts to obtain a renewal in principle of the Reciprocity Treaty, they are convinced that the establishment of free-trade between the Dominion and the United States is not likely to be promoted by making admission to the fisheries dependent upon the conclusion of such a Treaty, and that the repeal by Congress of duties upon Canadian produce on the ground that a protective tariff is injurious to the country which imposes it, would place the commercial relations of the two countries on a far more secure and lasting basis than the stipulations

CANADA.

of a Convention framed upon a system of reciprocity. Looking, therefore, to all the circumstances, Her Majesty's Government found it their duty to deal separately with the fisheries, and to endeavour to find some other equivalent; and the reciprocal concession of free fishery with free import of fish and fish oil, together with the payment of such a sum of money as may fairly represent the excess of value of the colonial over the American concession, seems to them to be an equitable solution of the difficulty. It is perfectly true that the right of fishery on the United States' coasts, conceded under Article 19, is far less valuable than the right of fishery in colonial waters, conceded under Article 18 to the United States; but, on the other hand, it cannot be denied that it is most important to the colonial fishermen to obtain free access to the American market for their fish and for fish oil, and the balance of advantage on the side of the United States will be duly redressed by the arbitrators under Article 22. In some respects a direct money payment is, perhaps, a more distinct recognition of the rights of the Colonies than a tariff concession, and there does not seem to be any difference in principle between the admission of American fishermen for a term of years in consideration of the payment of a sum of money in gross, and their admission under the system of licences calculated at so many dollars per ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty. In the latter case it must be observed the use of the fisheries was granted without any tariff concession whatever on the part of the United States, even as to the importation of fish.

Canada could not reasonably expect that this country should, for an indefinite period, incur the constant risk of serious misunderstanding with the United States, imperilling, perhaps, the peace of the whole Empire, in order to endeavour to force the American Government to change its commercial policy; and Her Majesty's Government are confident that when the Treaty is considered as a whole, the Canadian people will see that their interests have been carefully borne in mind, and that the advantages which they will derive from its provisions are commensurate with the concessions which they are called upon to make. There cannot be a question as to the great importance to Canada of the right to convey goods in bond through the United States, which has been secured to her by Article 29; and the free navigation of Lake Michigan under Article 28, and the power of transshipping goods under Article 30, are valuable privileges which must not be overlooked in forming an estimate of the advantages which Canada will obtain. Her Majesty's Government have no doubt that the Canadian Government will readily secure to the citizens of the United States, in accordance with Article 27, the use of the Canadian canals, as by the liberal policy of the Dominion those canals are already opened to them on equal terms with British subjects, and they would urge upon the Dominion Parliament and the Legislature of New Brunswick that it will be most advisable to make the arrangement as to duties on lumber floated down the St. John River, upon which the execution of Article 30 as to the transshipment of goods is made contingent.

The freedom to navigate the St. Lawrence, which is assured to the United States by Article 26, has long existed in fact, and its recognition by Treaty cannot be prejudicial to the Dominion, which moreover obtains in return the free use of certain rivers on the Pacific side of the continent.

I must not omit to notice that by Article 34 the dispute as to the Island of St. Juan is to be submitted to arbitration, and provision has thus happily been made for the amicable termination of a long-standing and difficult controversy, at a time when, in consequence of the union of British Columbia with the Dominion, this boundary question has become matter of interest to the whole Confederation of British Provinces.

I have thus gone through those parts of the Treaty which immediately touch the Dominion, but a question of much moment remains as to the course which should be taken during the present fishing season, pending the enactment by the respective Legislatures of the laws necessary to bring the fishery articles into operation.

I find that on the conclusion of the Reciprocity Treaty in June, 1854, and previous to its ratification, the then American Secretary of State, Mr. Marcy, expressed the hope of his Government that American fishermen would not be molested if they should at once attempt to use the privileges granted by that Treaty. A Despatch was therefore addressed to the Governors of the North American colonies, recommending that the wish of the United States' Government should be acceded to, and that the American fishermen should be immediately admitted to the Colonial fisheries. The result was that the various Colonial Governments at once admitted the American fishermen to the fisheries, although the legislative acts necessary to give effect to the Treaty were not passed till late in the autumn. It is evidently most desirable that a similar course should be pursued on the present occasion; and you will perceive from the Notes which have

passed between Sir E. Thornton and Mr. Fish, copies of which I enclose, that the United States' Government have made an application similar to that which they made in 1854, and that Her Majesty's Government have engaged to recommend to the Colonial Governments that it should be acceded to. Her Majesty's Government are, of course, aware that the Colonial Governments have no power to set aside the fishery statutes by their own authority; but it is entirely within their power to take no active steps to enforce those statutes, and to suspend the instructions to the colonial cruisers to exclude American citizens from the fisheries, just as it is in the power of Her Majesty's Government to suspend the action of Her Majesty's cruisers, although the Imperial Fishery Statute is still in force.

Her Majesty's Government have no desire whatever to attempt to interfere with the entire right of the Colonial Legislatures to refuse to pass the Acts necessary to give effect to the Treaty, though they would deeply deplore that a course which they believe would be most impolitic should be taken; but, on the other hand, they have too much confidence in the wisdom of those free Assemblies to anticipate any such result, and they are confident that the Canadian Government would be as desirous as Her Majesty's Government that no untoward collision should occur during the present season which might prejudice the fair consideration of the Treaty, both by the American Congress and the Colonial Parliaments, and that on a full consideration of the circumstances, they will see that the responsibility of incurring the risk of such a collision would be far heavier than that of removing, so far as they have the power, the obstacles to the provisional enjoyment by American citizens of the privileges which it is intended by the Treaty to secure to them for a longer time.

I cannot conclude this Despatch without expressing the gratification which it has given Her Majesty's Government to have had the valuable assistance of Sir J. Macdonald in the negotiation of this Treaty. Whatever view may be taken in Canada of the merits of the Treaty, it must be an unqualified cause of satisfaction to the Canadians to know that they were represented by a statesman holding so distinguished a position in the Canadian Government, and so well able, from his knowledge and experience, to put forward, with the greatest force and authority, the arguments best suited to promote the claims and interests of the Dominion.

The Lord Lisgar,
&c. &c. &c.

I have, &c.,
(Signed) KIMBERLEY.

Enclosures in No. 6.

MY LORD,

Washington, May 12, 1871.

Enclosures in
No. 6

With reference to my Despatches, Nos. 146 and 147 of the 8th instant, I have the honour to enclose copy of a note addressed to me by Mr. Fish, expressing the hope entertained by the Government of the United States that Her Majesty's Government will urge the Governments of the Dominion of Canada, of Prince Edward Island, and of Newfoundland to consent that American fishermen should be allowed to fish in the waters of the above Colonies during the coming season.

Your Lordship will observe that at the beginning of the second paragraph of the draft of the note which I forwarded in my Despatch, No. 146, the following words have been added:—"The Government of the United States would be prepared at the same time to admit British subjects to the right of fishing in the waters of the United States specified in the Treaty; but"

I also enclose copy of my answer to Mr. Fish, and hope your Lordship will find that his note, with the addition above mentioned, and my answer, are in accordance with the terms of your Lordship's telegram of 9th instant, transmitted through Earl de Grey.

His Lordship has seen both the enclosed notes, and approves of their contents.

The Earl Granville, K.G.,
&c. &c. &c.

I have, &c.,
(Signed) EDWARD THORNTON.

SIR,

Department of State, Washington, May 8, 1871.

As several Articles of the Treaty which has been signed this day, relating to the admission of citizens of the United States to fish within the territorial waters of Her Britannic Majesty on the coasts of Canada, Prince Edward Island, and Newfoundland, cannot come into full operation until the legislation contemplated in that instrument shall have taken place, and as it seems to be in accordance with the interests of both Governments, in furtherance of the objects and spirit of the Treaty, that the citizens of the United States should have the enjoyment of that liberty during the present season, I am directed by the President to express to you his hope that Her Majesty's Government will be prepared, in the event of the ratification of the Treaty, to make on their own behalf, and to urge the Governments of the Dominion of Canada, of Prince Edward Island, and of Newfoundland, to make for the season referred to within

CANADA. — their respective jurisdictions such relaxations and regulations as it may respectively be in their power to adopt, with a view to the admission of American fishermen to the liberty which it is proposed to secure to them by the Treaty. The Government of the United States would be prepared at the same time to admit British subjects to the right of fishing in the waters of the United States, specified in the Treaty; but as the admission into the United States free of duty of any articles which are by law subject to duty cannot be allowed without the sanction of Congress, the President will, in case the above suggestion meets with the views of the British Government, recommend and urge upon Congress at their next session, that any duties which may have been collected on and after the 1st day of July next, on fish-oil and fish (except fish of the inland lakes and of the rivers falling into the same, and except fish preserved in oil), the produce of the fisheries of the Dominion of Canada and of Prince Edward Island, shall be returned and refunded to the parties paying the same, if a similar arrangement is made with respect to the admission into the British possessions of fish-oil and fish (with the like exception), being the produce of the fisheries of the United States.

Sir E. Thornton, K.C.B.,
&c. &c. &c.

I have, &c.,
(Signed) HAMILTON FISH.

Sir,

Washington, May 9, 1871.

I have the honour to acknowledge the receipt of your note of yesterday's date, and to inform you in reply that I have been authorized by Earl Granville to state that in the event of the ratification of the Treaty signed yesterday, Her Majesty's Government will be prepared to recommend to the Governments of the Dominion of Canada, of Prince Edward Island, and of Newfoundland, that the provisional arrangement proposed in your note above mentioned, with regard to the right of fishing by United States' citizens on the coasts of those British possessions and by British subjects in the waters of the United States described in Article XIX. of the Treaty, shall take effect during the coming season, on the understanding that the ultimate decision of this question must rest with the above-mentioned Colonial Governments, who would be asked to grant the immediate and certain right of fishing within the territorial waters of those Colonies, whilst the return of the import duties on fish from the 1st July next promised by the United States is prospective and contingent on the action of Congress.

The Hon. Hamilton Fish,
&c. &c. &c.

I have, &c.,
(Signed) EDWARD THORNTON.

No. 7.

No. 7.

The EARL OF KIMBERLEY to The LORD LISGAR.

(No. 445.)

MY LORD,

Downing Street, June 20, 1871.

IN accordance with the strong wish expressed by the Dominion Government, that a representation should be made to the United States with reference to the losses inflicted on Canada by the Fenian raids, Her Majesty's Government instructed the British High Commissioners to bring the claims arising out of those raids before the Joint High Commission.

Your Lordship will observe from the Protocols of Conferences, copies of which were transmitted to you in my Despatch, No. 444,* of the 17th inst., that the American Commissioners declined to entertain the proposal made by the British Commissioners to include these claims in the Treaty.

Her Majesty's Government were well aware of the serious difficulties in the way of settling this question, and they could not, therefore, feel surprised at this result. At the same time, it was with much regret that they acquiesced in the omission of these claims from the general settlement of outstanding questions between Great Britain and the United States.

But it seemed to them evident that the British Commissioners were right in thinking that there was no reasonable probability that by further pressing the point an agreement would be come to upon it with the American Commissioners, and when the choice lay between the settlement of all the other differences between the two countries on terms which Her Majesty's Government believed to be honourable to both, and beneficial alike to Canada and the rest of the Empire, and the frustration of all hope of bringing the negotiations to a satisfactory issue, they could not hesitate as to the course which it was their duty to take.

The Lord Lisgar,
&c. &c. &c.

I have, &c.,
(Signed) KIMBERLEY.

No. 8.

CANADA.

No. 8.

The LORD LISGAR to The EARL of KIMBERLEY.

(No. 149.)

Cacouna, August 15, 1871.

(Received August 30, 1871.)

(Answered, No. 561, November 23, 1871, page 11.)

MY LORD,

WITH reference to your Lordship's Despatch, No. 444,* of the 17th June, which I duly referred to the Privy Council of the Dominion, I have the honour to transmit, herewith, the Report of a Committee of that body, containing their views on the subject of the Treaty of Washington, in so far as it affects the interests of Canada.

* Page 4.
July 28, 1871.

The Earl of Kimberley,
&c. &c. &c.

I have, &c.,
(Signed) LISGAR.

Enclosure in No. 8.

Enclosure in
No. 8.

Privy Council Chamber, Ottawa, Friday, July 28, 1871.

Present:—The Hon. Dr. Tupper, in the chair; the Hon. Sir John A. Macdonald, the Hon. Sir George Et. Cartier, the Hon. Mr. Tilley, the Hon. Mr. Mitchell, the Hon. Mr. Campbell, the Hon. Mr. Chapais, the Hon. Mr. Langevin, the Hon. Mr. Howe, the Hon. Sir Francis Hincks, the Hon. Mr. Dunkin, the Hon. Mr. Aikins.

To His Excellency the Right Hon. John, Baron LISGAR, G.C.B., G.C.M.G., P.C.,
Governor-General of Canada, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

The Committee of the Privy Council have had under their consideration the Earl of Kimberley's Despatch to your Excellency, dated the 17th June ult., transmitting copies of the Treaty signed at Washington on the 8th May last by the Joint High Commissioners, and which has since been ratified by Her Majesty and by the United States of America; of the instructions to Her Majesty's High Commissioners, and of the Protocols of the Conferences held by the Commission; and likewise the Earl of Kimberley's Despatch of the 20th of June ult., explaining the failure of Her Majesty's Government to obtain the consideration, by the United States' Commissioners, of the claims of Canada for the losses sustained owing to the Fenian raids of 1866 and 1870.

No. 444.

The Committee of the Privy Council have not failed to give their anxious consideration to the important subjects discussed in the Earl of Kimberley's Despatches, and they feel assured that they will consult the best interests of the Empire by stating frankly, for the information of Her Majesty's Government, the result of their deliberations, which they believe to be in accordance with public opinion in all parts of the Dominion.

No. 445.

The Committee of the Privy Council readily admit that Canada is deeply interested in the maintenance of cordial relations between the Republic of the United States and the British Empire, and they would therefore have been prepared without hesitation to recommend the Canadian Parliament to co-operate in procuring an amicable settlement of all differences likely to endanger the good understanding between the two countries. For such an object they would not have hesitated to recommend the concession of some valuable rights, which they have always claimed to enjoy under the Treaty of 1818, and for which, as the Earl of Kimberley observes, Her Majesty's Government have always contended, both Governments having acted on the interpretation given to the Treaty in question by high legal authorities. The general dissatisfaction which the publication of the Treaty of Washington has produced in Canada, and which has been expressed with as much force in the agricultural districts of the west, as in the maritime provinces, arises chiefly from two causes.

1st. That the principal cause of difference between Canada and the United States has not been removed by the Treaty, but remains a subject for anxiety.

2ndly. That a cession of territorial rights of great value has been made to the United States, not only without the previous assent of Canada, but contrary to the expressed wishes of the Canadian Government.

The Committee of the Privy Council will submit their views on both those points for the information of Her Majesty's Government, in the hope that by means of discussion a more satisfactory understanding between the two Governments may be arrived at. The Earl of Kimberley has referred to the rules laid down in Article 6 of the Treaty of Washington, as to the international duties of neutral Governments as being of special importance to the Dominion; but the Committee of the Privy Council, judging from past experience, are much more apprehensive of misunderstanding owing to the apparent difference of opinion between Canada and the United States as to the relative duties of friendly States in a time of peace. It is unnecessary to enter into any lengthened discussion of the conduct of the United States during the last six or seven years with reference to the organization of considerable numbers of the citizens of those States under the designation of Fenians. The views of the Canadian Government on this subject are in possession of Her Majesty's Government; and it appears from the Protocol of Conference between the High Commissioners that the British Commissioners presented the claims of the people of Canada, and were instructed to state that they were regarded by her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of 26th January last, as subjects for the consideration of the Joint High Commissioners. The Earl of Kimberley states that it was with much regret that Her Majesty's Government acquiesced in the omission of these claims from the general settlement of outstanding questions between Great Britain and the United States; and the Committee of the Privy Council, while fully participating in that regret, must add that the fact that this Fenian

CANADA.

organization is still in full vigour, and that there seems no reason to hope that the United States' Government will perform its duty as a friendly neighbour any better in the future than in the past, leads them to entertain a just apprehension that the outstanding subject of difference with the United States is the one of all others which is of special importance to the Dominion. They must add, that they are not aware that during the existence of this Fenian organization, which for nearly seven years has been a cause of irritation and expense to the people of Canada, Her Majesty's Government have made any vigorous effort to induce the Government of the United States to perform its duty to a neighbouring people, who earnestly desire to live with them on terms of amity, and who during the civil war loyally performed all the duties of neutrals to the expressed satisfaction of the Government of the United States. On the contrary, while in the opinion of the Government and the entire people of Canada, the Government of the United States neglected, until much too late, to take the necessary measures to prevent the Fenian invasion of 1870, Her Majesty's Government hastened to acknowledge, by cable telegram, the prompt action of the President, and to thank him for it. The Committee of the Privy Council will only add, on this painful subject, that it is one on which the greatest unanimity exists among all classes of the people throughout the Dominion, and the failure of the High Commissioners to deal with it has been one cause of the prevailing dissatisfaction with the Treaty of Washington.

The Committee of the Privy Council will proceed to the consideration of the other subject of dissatisfaction in Canada, viz. the cession to the citizens of the United States of the right to the use of the inshore fisheries in common with the people of Canada. The Earl of Kimberley, after observing that the Canadian Government took the initiative in suggesting that a joint British and American Commission should be appointed, with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818, proceeds to state that "the causes of the difficulty lay deeper than any question of interpretation," that "the discussion of such points as the correct definition of bays could not lead to a friendly agreement with the United States," and that "it was necessary therefore to endeavour to find an equivalent which the United States might be willing to give in return for the fishery privileges."

In the foregoing opinion of the Earl of Kimberley the Committee of the Privy Council are unable to concur, and they cannot but regret that no opportunity was afforded them of communicating to Her Majesty's Government their views on a subject of so much importance to Canada, prior to the meeting of the Joint High Commission.

When the Canadian Government took the initiative of suggesting the appointment of a Joint British and American Commission they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberley in his recent Despatch. Had such sentiments been expressed to the delegate appointed by the Canadian Government to confer with his Lordship a few months before the appointment of the Commission, it would at least have been in their power to have remonstrated against the cession of the inshore fisheries; and it would moreover have prevented any member of the Canadian Government from acting as a member of the Joint High Commission unless on the clear understanding that no such cession should be embodied in the Treaty without their consent. The expediency of the cession of a common right to the inshore fisheries has been defended on the ground that such a sacrifice on the part of Canada should be made in the interests of peace. The Committee of the Privy Council, as they have already observed, would have been prepared to recommend any necessary concession for so desirable an object, but they must remind the Earl of Kimberley that the original proposition of Sir Edward Thornton, as appears by his letter of 26th January, was that "a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America."

In his reply, dated 30th January last, Mr. Secretary Fish informs Sir Edward Thornton that the President instructs him to say that "he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission."

In accordance with the explicit understanding thus arrived at between the two Governments, Earl Granville issued instructions to Her Majesty's High Commission, which, in the opinion of the Committee of the Privy Council, covered the whole ground of controversy.

The United States had never pretended to claim a right on the part of their citizens to fish within three marine miles of the coasts and bays, according to their limited definition of the latter term; and although the right to enjoy the use of the inshore fisheries might fairly have been made the subject of negotiation, with the view of ascertaining whether any proper equivalents could be found for such a concession, the United States was precluded by the original correspondence from insisting on it as a condition of the treaty. The abandonment of the exclusive right to the inshore fisheries, without adequate compensation, was not therefore necessary in order to come to a satisfactory understanding on the points really at issue.

The Committee of the Privy Council forbear from entering into a controversial discussion as to the expediency of trying to influence the United States to adopt a more liberal commercial policy. They must, however, disclaim most emphatically the imputation of desiring to imperil the peace of the whole Empire in order to force the American Government to change its commercial policy. They have for a considerable time back ceased to urge the United States to alter their commercial policy, but they are of opinion that when Canada is asked to surrender her inshore fisheries to foreigners, she is fairly entitled to name the proper equivalent. The Committee of the Privy Council may observe, that the opposition of the Government of the United States to reciprocal free trade in the products of the two countries was just as strong for some years prior to 1854 as it has been since the termination of the Reciprocity Treaty, and that the Treaty of 1854 was obtained chiefly by the vigorous protection of the fisheries which preceded it; and that but for the conciliatory policy on the subject of the fisheries, which Her Majesty's Government induced Canada to adopt after the abrogation of the Treaty of 1854 by the United States, it is not improbable that there would have been no difficulty in obtaining its renewal. The Committee of the Privy Council have adverted to the policy of Her Majesty's Government, because the Earl of Kimberley

has stated that there is no difference in principle between a money payment and "the system of licences calculated at so many dollars a ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty." Reference to the correspondence will prove that the licence system was reluctantly adopted by the Canadian Government as a substitute for the still more objectionable policy pressed upon it by Her Majesty's Government, it having been clearly understood that the arrangement was of a temporary character. In his Despatch of the 3rd March, 1866, Mr. Secretary Cardwell observed: "Her Majesty's Government do not feel disinclined to allow the United States for the season of 1866 the freedom of fishing granted to them in 1854, on the distinct understanding that unless some satisfactory arrangements between the two countries be made during the course of the year this privilege will cease, and all concessions made in the Treaty of 1854 will be liable to be withdrawn." The principle of a money payment for the concession of territorial rights has ever been most repugnant to the feelings of the Canadian people, and has only been entertained in deference to the wishes of the Imperial Government. What the Canadians were willing under the circumstances to accept as an equivalent was the concession of certain commercial advantages, and it has therefore been most unsatisfactory to them that Her Majesty's Government should have consented to cede the use of the inshore fisheries to foreigners for considerations which are deemed wholly inadequate. The Committee of the Privy Council need not enlarge further on the objectionable features of the Treaty as it bears on Canadian interests. These are admitted by many, who think that Canada should make sacrifices for the general interests of the Empire. The people of Canada, on the other hand, seem to be unable to comprehend that there is any existing necessity for the cession of the right to use their inshore fisheries without adequate compensation. They have failed to discover that in the settlement of the so-called 'Alabama' claims, which was the most important question in dispute between the two nations, England gained such advantages as to be required to make further concessions at the expense of Canada, nor is there anything in the Earl of Kimberley's Despatch to support such a view of the question. The other parts of the Treaty are equally, if not more, advantageous to the United States than to Canada, and the fishery question must, consequently, be considered on its own merits; and if so considered, no reason has yet been advanced to induce Canada to cede her inshore fisheries for what Her Majesty's Government have admitted to be an inadequate consideration. Having thus stated their views on the two chief objections to the late Treaty of Washington, the Committee of the Privy Council will proceed to the consideration of the correspondence between Sir Edward Thornton and Mr. Fish, transmitted in the Earl of Kimberley's Despatch of the 17th of June, and of his Lordship's remarks thereon. This subject has already been under the consideration of the Committee of the Privy Council, and a Report, dated the 7th June, embodying their views on the subject, was transmitted to the Earl of Kimberley by your Excellency. In his Despatch of 26th June, acknowledging the receipt of that Report, the Earl of Kimberley refers to his Despatch of the 17th of that month, and "trusts that the Canadian Government will, on mature consideration, accede to the proposal of the United States' Government on this subject." The Committee of the Privy Council in expressing their adherence to their Report of the 7th of June, must add, that the inapplicability of the precedent of 1854, under which the action of the Canadian Parliament was anticipated by the Government, to the circumstances now existing appears to them manifest. The Treaty of 1854 was negotiated with the concurrence of the Provincial Governments represented at Washington, and met with the general approbation of the people; whereas the fishery clauses of the late Treaty were adopted against the advice of the Canadian Government, and have been generally disapproved of in all parts of the Dominion.

There can hardly be a doubt that any action on the part of the Canadian Government in anticipation of the decision of Parliament would increase the discontent which now exists. The Committee of the Privy Council request that your Excellency will communicate to the Earl of Kimberley the views which they entertain on the subject of the Treaty of Washington in so far as it affects the interests of the Dominion.

(Signed) WM. H. LEE,
Clerk, Privy Council, Canada.

No. 9.

No. 9.

THE EARL OF KIMBERLEY TO THE LORD LISGAR.

(No. 561.)

MY LORD,

Downing Street, November 23, 1871.

HER Majesty's Government have not failed to consider with attention the Report of the Committee of the Privy Council of the Dominion on the Treaty of Washington, which was enclosed in your Lordship's Despatch, No. 149,* of August 15.

* Page 9.

I need scarcely say that Her Majesty's Government regret that your Ministers should have found so much to object to in the provisions of the Treaty, but they remain themselves of opinion, for the reasons which were fully stated in my Despatch of June 17 last,† that, looked at as a whole, the Treaty is beneficial to the interests of the Dominion. I shall endeavour as far as possible to avoid entering into further discussion of the clauses of the Treaty which apply especially to Canada, as I cannot think that any advantage would result from a prolonged controversy between the two Governments as to the details of the Treaty and the manner in which the negotiation was conducted. There are, however, two or three statements in the Report which it is necessary that I should not leave unnoticed.

† Page 4.

CANADA.

The Committee seem to be under the impression that the right to participate in the colonial inshore fisheries has been conceded to the United States without the previous consent of Canada. On this I have to observe that provision has been made for obtaining the assent of Canada in the manner which is strictly in accordance with constitutional usage, namely, by stipulating that the Fishery Articles shall not come into force without the previous assent of the Dominion Parliament. If the Crown were to conclude a similar Treaty as regards the fisheries of the United Kingdom, the assent of the Imperial Parliament would be reserved in no other manner.

I must also point out that the Committee are under an entire misapprehension in supposing that the cession of the fishery rights is to be made for "what Her Majesty's Government have admitted to be an inadequate consideration." If you will refer to my Despatch of June 17 you will find that it was there stated that "the reciprocal concession of free fishing, with free import of fish and fish oil, together with the payment of such a sum of money as may fairly represent the excess of value of the Colonial over the American concession, seems to Her Majesty's Government to be an equitable solution of the difficulty."

Lastly, I must advert to the statement that "when the Canadian Government took the initiative in suggesting the appointment of a joint British and American Commission they never contemplated the surrender of their territorial rights, and they had no reason to suppose that Her Majesty's Government entertained the sentiments expressed by the Earl of Kimberley in his recent Despatch. Had such sentiments been expressed to the Delegate appointed by the Canadian Government to confer with his Lordship a few months before the appointment of the Commission, it would at least have been in their power to have remonstrated against the cession of the inshore fisheries, and it would moreover have prevented any member of the Canadian Government from acting as a member of the Joint High Commission, unless on the clear understanding that no such cession should be embodied in the Treaty without their consent."

It is true, no doubt, that in the conversation which I had with Mr. Campbell on the subject of the appointment of a joint British and American Commission, I did not allude to the possibility of such a Commission leading to an arrangement by which United States' fishermen should be admitted to participation in the colonial inshore fisheries, but I could not then anticipate that an extended negotiation, embracing all the questions at issue between Great Britain and the United States, would arise out of the proposal to appoint a Commission upon the fisheries; and when the Joint High Commission was appointed, it was distinctly intimated through your Lordship to Sir John Macdonald, with reference to the fisheries, before he accepted the office of Commissioner, that it was impossible for Her Majesty's Government to pledge themselves to a foregone conclusion on any particular point before entering into the negotiation.

The Lord Lisgar,
&c. &c. &c.

I am, &c.,
(Signed) KIMBERLEY.

No. 10.

No. 10.

The LORD LISGAR to The EARL OF KIMBERLEY.

(No. 13.)

Government House, Ottawa, January 22, 1872.

(Received February 5, 1872.)

(Answered, No. 58, March 18, 1872, page 14.)

MY LORD,

I HAVE the honour to enclose, for your Lordship's consideration, a Minute of the Priory Council of the Dominion, which conveys the reply of that body to your Lordship's Despatch, No. 561,* of the 23rd November last, and urges the request for an Imperial guarantee to a Canadian loan not to exceed four millions, i.e. half the amount to be expended on the railway to the Pacific, and the enlargement of the St. Lawrence canals.

2. This proposal the Council recommend as in their opinion the best mode of adjusting all demands on the score of the Fenian claims, and of surmounting the difficulties in the way of obtaining the consent of the Canadian Parliament to the measures necessary to give effect to the Treaty of Washington.

The Earl of Kimberley,
&c. &c. &c.

I have, &c.,
(Signed) LISGAR.

January 20,
1872.

* Page 11.

Enclosure in No. 10.

CANADA.

Enclosure in
No. 10.

COPY of a REPORT of a COMMITTEE of the HONOURABLE the PRIVY COUNCIL, approved by¹
His Excellency the GOVERNOR-GENERAL on the 20th January, 1872.

The Committee of the Privy Council have had under their consideration the Earl of Kimberley's Despatch to your Excellency, dated the 23rd of November, 1871, on the subject of the Report of the Privy Council, dated the 28th July, and transmitted in your Excellency's Despatch of 15th of August. The object of that Report was to explain to Her Majesty's Government that much dissatisfaction prevailed in Canada owing to the absence of all provision in the Treaty of Washington for the settlement of the losses incurred by Canada in consequence of the raids of citizens of the United States on British territory, and also owing to the cession of the Canadian fisheries for an inadequate consideration.

The Committee of Council were aware from the Earl of Kimberley's Despatch of the 17th June, 1871, that Her Majesty's Government were very desirous that the Acts necessary to give effect to the fishery clauses of the Treaty of Washington should be passed by the Canadian Parliament, and they had hoped that some proposition might be made by Her Majesty's Government in reply to their Report that would enable them to propose such measures with a fair prospect of success. In the Earl of Kimberley's Despatch to your Excellency, dated 23rd of November, no reference whatever is made to the subject of the Fenian raids; and with regard to the fishery clauses of the Treaty, the only inference to be drawn from the Despatch is that the objections raised by the Committee of Council are of very little weight.

The Committee of Council readily admit that further controversial discussion on the points on which differences of opinion unfortunately exist between the two Governments would be unprofitable.

It is, however, due to both Her Majesty's Government and to themselves that they should frankly explain to the former the conclusion at which they have arrived on the two questions discussed in their Report of the 28th of July last.

They maintain that Canada has a just claim to compensation for the expenses incurred in consequence of the Fenian raids.

It seems unnecessary to support this opinion by further argument.

Although the Committee of Council deem it unnecessary to dwell on the objections which they entertain to the fishery clauses in the Treaty, they desire to offer an explanation with reference to the statement in their former Report to which the Earl of Kimberley has taken exception, and which was to the effect that Her Majesty's Government had ceded the rights of fishery for what they admitted to be an inadequate consideration.

In the course of the negotiations the United States' Commissioners had offered as an equivalent for the rights of fishery to admit Canadian coal and salt free of duty, and lumber after the 1st July, 1874.

This was deemed both by the Imperial and Canadian Governments an inadequate offer, and a counter proposition was made by the British Commissioners that lumber should be admitted free immediately, and that in consideration of the continued exclusion of cereals, live stock, and other articles admitted under the Treaty of 1854, a sum of money should be paid to Canada.

The United States' Commissioners not only refused the counter-proposition, but withdrew their former offer, substituting one which the Committee of Council infer, from the Earl of Kimberley's Despatch, was in the opinion of Her Majesty's Government, more favourable to Canada than that which had been rejected as inadequate.

Wide, however, as are the differences of opinion on this Continent regarding the Treaty, there is but one opinion on the point under consideration. It is clear that the United States preferred paying a sum of money to the concession of commercial advantages to Canada, and the Committee of Council feel assured that there is not a single member of the Canadian Parliament who would not have much preferred the rejected proposition to that which was finally adopted.

The Committee of Council cannot, with the Earl of Kimberley's Despatch before them, continue to affirm that Her Majesty's Government are of opinion that the cession of the fishery rights was made for an inadequate consideration; but they regret they are themselves of a different opinion.

While still adhering to their expressed opinions as to the Fishery Articles of the Treaty of Washington, they are yet most anxious to meet the views of Her Majesty's Government, and to be placed in a position to propose the necessary legislative measures, and they will therefore proceed to make a suggestion which they earnestly hope may receive a favourable response. The adoption of the principle of a money payment in satisfaction of the expenses incurred by the Fenian raids would not only be of no assistance with reference to the Treaty, but might lead to some complications. It is not improbable that differences of opinion would arise in the discussion of the details of those claims between the two Governments which might lead to mutual dissatisfaction. Again, such a solution of the question would necessitate a discussion in the Imperial Parliament, in the course of which opinions might be expressed by members which might irritate the people of Canada, and might, moreover, encourage the Fenian leaders in the United States, who have not ceased their agitation. There is, in the opinion of the Committee of Council, a mode by which their hands might be so materially strengthened that they would be enabled not only to abandon all claims on account of the Fenian raids, but likewise to propose, with a fair prospect of success, the measures necessary to give effect to those clauses in the Treaty of Washington which require the concurrence of the Dominion Parliament.

That mode is by an Imperial guarantee to a portion of the loan which it will be necessary for Canada to raise in order to procure the construction of certain important public works, which will be highly beneficial to the United Kingdom as well as to Canada.

It is not pretended that the construction of these works is contingent on an Imperial guarantee. The credit of Canada has never stood so high in the money market as at the present time, its 5 per cent. securities being at a premium. But there is no doubt that with the Imperial guarantee a considerable saving of interest could be effected.

The Committee of Council feel assured that Her Majesty's Government will recognize the scrupulous

CANADA. good faith which has invariably been observed by Canada under Governments of various shades of politics Her Majesty's Government are aware that one of the conditions on which British Columbia joined the Confederation was that Canada should procure the construction of an inter-oceanic railroad. In order to procure the construction of this gigantic work a cash subsidy will have to be granted to the company undertaking it, to the extent, in all probability, of five millions sterling. This railroad will open up for settlement the vast prairies of the North West, which will sustain an enormous population. According to the most reliable statistics the immigration from the United Kingdom to Canada is in about the proportion of one to six to that from the United Kingdom to the United States, the population of the United States being more than ten times as great as that of Canada. On the other hand the imports into Canada of staple articles of British manufacture, such as cottons, woollens, and iron and hardware, are about three times as large in proportion to the population as those into the United States. It is therefore clearly the interest of the United Kingdom that the British North West territories should be opened for settlement as speedily as possible; and to effect this object the Canadian Pacific Railroad is indispensably necessary. That railroad, it may be added, would in all probability be found the most eligible mode of conveying a portion of Her Majesty's mails to the East. The time has arrived when the enlargement and extension of the Canadian canals, so earnestly desired by the United States, as appears by the Protocols attached to the Treaty of Washington, can no longer be postponed. The required works must be constructed by the Government, and will cost about three millions sterling, the aggregate for the railroad and canals being eight millions. The revenues of Canada are in a most satisfactory condition, and fully able to bear the increased charge which will be gradually thrown upon them. The taxes are much less than in the adjoining Republic, and are cheerfully borne by the people.

The Committee of Council are of opinion that Her Majesty's Government might fairly be urged to propose to Parliament a guarantee for a Canadian loan not to exceed four millions sterling, on the condition that such guaranteed loan should be raised at the same time and in equal proportion with a Canadian unguaranteed loan for the same objects.

The Committee of Council do not believe that any better mode can be suggested by which they would be enabled to surmount the difficulties in the way of their obtaining the consent of the Canadian Parliament to the measures necessary to give effect to the Treaty of Washington than that which they have felt it their duty to recommend.

The Committee of Council trust that, should other difficulties be removed, Her Majesty's Government will enable them to assure the Canadian Parliament that any recommendation made by Canada to terminate the Articles of the Treaty of Washington, numbered 18 to 25 inclusive, and likewise Article 30, in conformity with Article 33, would be acted on.

(Certified)

WM. H. LEE,
Clerk, Privy Council, Canada.

No. 11.

No. 11.

THE EARL OF KIMBERLEY TO THE LORD LISGAR.

(No. 58.)

MY LORD,

Downing Street, March 18, 1872.

HER Majesty's Government have given their most careful attention to the Report of the Committee of the Canadian Privy Council enclosed in your Lordship's Despatch, No. 13,* of January 22. The Committee state, that while adhering to their opinions as to the Fishery Articles of the Treaty of Washington, they are yet most anxious to meet the views of Her Majesty's Government, and to be placed in a position to propose the necessary legislative measures. They maintain that Canada has a just claim for compensation for expenses incurred in consequence of the Fenian raids, but they are of opinion that the adoption of the principle of a money payment in satisfaction of those expenses would be of no assistance with reference to the Treaty, and would be open to objection on other grounds. They therefore suggest another mode of settlement by which, in their opinion, their hands might be so materially strengthened that they would be enabled, not only to abandon all claims on account of the Fenian raids, but likewise to propose to the Dominion Parliament, with a fair prospect of success, the measures necessary to give effect to the Treaty.

Their suggestion is, that Her Majesty's Government should propose to Parliament a guarantee for a Canadian loan, not exceeding four millions sterling, being half the amount (8,000,000*l.*) which it is intended to raise for the purpose of constructing the railroad through British territory to the Pacific, and of enlarging and extending the Canadian canals.

Her Majesty's Government have considered this suggestion with an earnest desire to remove the difficulties which are felt by the Canadian Government, and I have now to convey to you the conclusions at which they have arrived. They are of opinion that the most convenient course will be that it should be provided in the Acts to be passed

* Page 12.

by the Dominion Parliament to give effect to the Treaty, that such Acts should only come into force upon the issue of a Proclamation by the Governor-General in Council bringing them into operation. On their part, Her Majesty's Government will engage that when the Treaty shall have taken effect by the issue of such Proclamation, they will propose to Parliament to guarantee a Canadian loan of 2,500,000*l.*, such loan to be applied to the purposes indicated by the Council, namely, the construction of the railroad through British territory from Canada to the Pacific, and the improvement and enlargement of the Canadian canals, and to be raised at the same time and in equal proportion with the Canadian unguaranteed loan for the same objects, on the understanding that Canada abandons all claims on this country on account of the Fenian raids. As regards the request of the Privy Council that Her Majesty's Government will enable them to assure the Dominion Parliament that any recommendation made by Canada to terminate the Articles of the Treaty numbered 18 to 25 inclusive, and likewise Article 30 in conformity with Article 33, would be acted on, I may observe, that no such assurance was asked or given in the case of the Reciprocity Treaty, but Her Majesty's Government recognize that it is not unreasonable that Canada should desire some assurance on this point, and they have, therefore, no hesitation in declaring that the greatest deference would be paid to the expression of the wishes of the Dominion, signified by Addresses from both Houses of the Dominion Parliament, and that those wishes would certainly be attended to, subject, of course, to the necessary reservation of Her Majesty's discretion to take into consideration, in the interests of the whole Empire, the state of her relations with Foreign Powers at the particular juncture.

I have already conveyed to your Lordship, by telegraph, the substance of this Despatch.

I have, &c.,

(Signed) KIMBERLEY.

The Lord Lisgar,
&c. &c. &c.

LONDON:

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FOR HER MAJESTY'S STATIONERY OFFICE.

